

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JAMES C. BAER,
Plaintiff,

v.

MIDLAND CREDIT
MANAGEMENT, LLC,
Defendant.

§
§
§
§
§
§
§
§

Civil Action No. 5:21-cv-1248

NOTICE OF REMOVAL

Notice is hereby given that, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Midland Credit Management, Inc.¹ (“Defendant”) hereby removes this action from Justice Court, Precinct 1, of Bexar County, TX, to the United States District Court for the Western District of Texas, and as grounds for removal state as follows:

I. STATE COURT ACTION

1. On October 15, 2021, James C. Baer (“Plaintiff”) filed his Original Complaint (the “Petition”) in the Justice Court, Precinct 1, of Bexar County, Texas, styled *James C. Baer v. Midland Credit Management, LLC*, Cause No. 11S2100376 (the “State Court Action”).

2. Plaintiff alleges that Defendant violated the Fair Debt Collection Practices Act (“FDCPA”) by pursuing a writ of garnishment to collect on a dormant judgment. *See* Pet. ¶¶ 1–3, 8–22.

3. Defendant removes the State Court Action to this Court on the basis of federal question jurisdiction, as more fully described below.

¹ Plaintiff improperly named Defendant as “Midland Credit Management, LLC.”

II. PROCEDURAL REQUIREMENTS

4. This action is properly removed to this Court because the State Court Action is pending within this district. *See* 28 U.S.C. § 1441; 28 U.S.C. § 124(d)(4).

5. This removal is timely. Defendant is removing this case within thirty days of being properly served or otherwise appearing in the State Court Action. 28 U.S.C. § 1446(b).

6. The United States District Court for the Western District of Texas, has original jurisdiction over this action based on federal question jurisdiction because the Petition asserts claims arising under federal law. *See* 28 U.S.C. § 1331.

7. Pursuant to 28 U.S.C. § 1446(a), attached hereto as **Exhibit A** is a true and correct copy of the Petition and Defendant's Original Answer from the State Court Action. Defendant will supplement the file from the State Court Action as may be necessary.

8. Pursuant to 28 U.S.C. § 1446(d), Defendant is simultaneously with the filing of this Notice of Removal (1) serving Plaintiff with a copy of the Notice of Removal, and (2) filing a copy of the Notice of Removal in the Justice Court, Precinct 1, of Bexar County, TX. A copy of the Notice of Removal filed in the State Court Action is attached hereto as **Exhibit B**.

III. FEDERAL QUESTION

9. The district courts of the United States have original jurisdiction over all civil actions arising under the Constitution, laws, and treaties of the United States. *See* 28 U.S.C. § 1331. A case may be removed to federal court if it could have been brought in federal court originally. *See* 28 U.S.C. § 1441; *see also Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6, (2003). A claim "arises under" federal law when either (1) the well-pleaded complaint establishes that federal law creates the cause of action; or (2) the plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal law. *See Singh v. Morris*, 538 F.3d 334, 338 (5th

Cir. 2008) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27–28 (1983)); see also *Empire HealthChoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 690 (2006).

10. Removal of the State Court Action is proper under 28 U.S.C. §§ 1331 and 1441, as it arises under the laws of the United States. Specifically, Plaintiff alleges that Defendant violated the FDCPA. See Pet. ¶¶ 15–22. The FDCPA expressly grants this Court original jurisdiction to hear such claims. See 15 U.S.C. §§ 1681p, 1692k(d). Thus, Plaintiff alleges a violation of federal law and his right to relief will necessarily depend upon the resolution of federal law. Accordingly, this Court has federal question jurisdiction.

IV. PRAYER

WHEREFORE, Defendant removes this action from the Justice Court, Precinct 1, of Bexar County, Texas, to the United States District Court for the Western District of Texas, so that this Court may assume jurisdiction over the cause as provided by law.

Respectfully submitted,

/s/ Daniel Durell

Daniel Durell
Texas Bar No. 24078450
daniel.durell@lockelord.com
LOCKE LORD LLP
600 Congress Avenue, Suite 2200
Austin, Texas 78701
Telephone: (512) 305-4700
Facsimile: (512) 305-4800

Camille Griffith
State Bar No. 24034761
camille.griffith@lockelord.com
LOCKE LORD LLP
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-6776
Telephone: (214) 740-8000
Facsimile: (214) 740-8800

**Attorneys for Defendant
Midland Credit Management, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of December, 2021, a true and correct copy of the foregoing was sent via email and certified mail to all parties of record, and as indicated below:

**Via Email: bill@clantonlawoffice.com &
certified mail, return receipt requested no.
9214 7969 0099 9790 1641 2119 92**

William M. Clanton
Law Office of Bill Clanton
926 Chulie Dr.
San Antonio, Texas 78216
Attorney for Plaintiff

/s/ Daniel Durell

Counsel for Defendant